

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DONNA CURLING, *et al.*,

Plaintiffs,

V.

BRIAN P. KEMP, *et al.*,

Defendants.

CIVIL ACTION NO.
1:17-CV-2989-AT

ORDER

Counsel for Defendant Merle King, the Executive Director of the Center for Election Systems (“CES”) at Kennesaw State University, emailed the Court and copied all other counsel on December 8, 2017. (Exhibit A, Email from Robert S. Highsmith, Jr. to the Court on December 8, 2017 at 2:03 P.M.) Mr. King’s counsel informs the Court that a memorandum of understanding exists between the Secretary of State and the CES that is set to expire on December 31, 2017, at which time the director of the CES will transfer and become an employee of the Secretary of State. Additionally, the “functions, files, data and physical equipment of the CES will also transfer to the Secretary of State’s office,” and the CES at Kennesaw State University will close after the transfer is complete. *Id.* Mr. King’s counsel goes on to explain that this will involve a physical transfer of

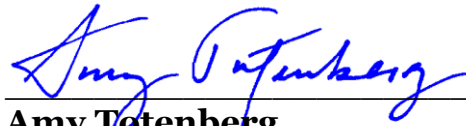
several items to the Secretary of State, including hardware, software, DRE machines, data maintained by the CES, etc.

It appears from the email that the CES will be transferring all evidence and information to the Secretary of State that is pertinent to this litigation. If Plaintiffs have any questions or issues regarding the transfer, counsel¹ are instructed to confer no later than Wednesday, December 13, 2017 at 12:00 P.M. If there are any unresolved issues after counsel confer, counsel shall file a joint statement in which each side represents its position no later than Thursday, December 14, 2017 at 12:00 P.M. The Court hopes and does not expect that such a joint statement will be necessary. Alternatively, if the parties reach an agreement that is supplemental to the data transfer email (Exhibit A), they shall file it no later than Thursday, December 14, 2017 at 12:00 P.M.

The Court further notes that it has drafted an order regarding preservation of evidence in this matter. The Court is waiting to issue the order, however, until the most recent local election results are certified so as to avoid disrupting that process and until any issues (if there are such) are addressed in connection with the CES's transfer of equipment and data to the Secretary of State.

¹ Plaintiff Coalition for Good Governance ("CGG") previously represented that it has retained counsel at Ney Hoffeecker Peacock & Hayle, LLC for "the sole purpose of litigating issues related to the withdrawal of Steptoe & Johnson LLP (and associated attorneys) and *urgent ancillary matters* as counsel." (Doc. 115-1 at 2 n. 2) (emphasis added). Counsel at Ney Hoffeecker Peacock & Hayle, LLC may therefore represent CGG regarding this issue.

IT IS SO ORDERED this 11th day of December, 2017.

A handwritten signature in blue ink, appearing to read "Amy Totenberg", is written over a horizontal line.

Amy Totenberg
United States District Judge

EXHIBIT A

Holland & Knight

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December 8, 2017

Via E-mail (Amy_McConochie@gand.uscourts.gov)

The Honorable Amy Totenberg
United States District Judge
2388 Richard B. Russell Federal Building and
United States Courthouse
75 Ted Turner Drive, SW
Atlanta, GA 30303-3309

**Re: *Curling v. Kemp*, Case No. 1:17-cv-02989-AT (N.D. Ga.) – Update to Court and
Parties Regarding Center for Elections Systems’ Equipment & Data Transfer**

Dear Judge Totenberg:

We represent Defendant Merle King in his individual capacity and his official capacity as Executive Director of the Center for Election Systems at Kennesaw State University.

Because of the administrative closure of this case through and including at least January 2, 2017 (*see* Doc. No. 117), the continuing uncertainty surrounding plaintiffs’ counsel (Doc. Nos. 109, 113 & 115), and the Court’s prior teleconference regarding preservation issues (Doc. No. 105), we write to inform the Court and the parties of a forthcoming transfer of data and equipment from the Center for Election Systems (the “CES”) to the office of Georgia’s Secretary of State, currently set to occur on December 18, 2017.

The CES’ sole function is to provide election services to the Secretary of State. It has long been the intent of both parties to end that relationship and transfer the functions performed by the CES back to the Secretary of State’s Office. Accordingly, the memorandum of understanding currently in place between the CES and the Secretary of State is scheduled to expire on December 31, 2017. When that occurs, the director of the CES, Michael Barnes, will transfer and become an employee of the Secretary of State and the functions, files, data and physical equipment of the CES will also transfer to the Secretary of State’s office. With no remaining staff or purpose, the CES at Kennesaw State University (“KSU”) will close shortly after the transfer.

The Honorable Amy Totenberg
December 8, 2017
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The CES and the Secretary of State plan to physically transfer the following categories of items by no later than December 18, 2017 (as KSU will be closed between December 22, 2017 and January 2, 2018):

- (1) Hardware, software, and similar equipment, including computers, DRE machines, and compact flash cards.
- (2) Data that is currently maintained by the CES, most of which is property of the Secretary of State pursuant to the terms of the memorandum of understanding.
- (3) Paper files maintained by the CES.

The transfer of this hardware and information is critical to the ongoing business of the State including preparations for upcoming and future elections.

KSU will continue to maintain litigation holds on all email accounts of employees of the CES as those accounts are, and have been, maintained by KSU's University Information Technology Services, which is separate and distinct from the CES. Those holds will remain in place through the end of this litigation. And after the transfer this equipment and data will continue to be held and maintained by co-defendant Brian Kemp as Secretary of State of Georgia and Chair of the State Election Board, to the same extent as would be required of the CES under the litigation hold since the Secretary of State is under the same litigation hold as the CES.

Thank you very much for Your Honor's time and consideration of this case.

Sincerely yours,

HOLLAND & KNIGHT LLP


w/ express permission

Robert S. Highsmith Jr.

RSH:cms